

## Persons with Intellectual Disability and the Criminal Justice System: What Families, Providers, and Law Enforcement Should Know

*“Persons with intellectual disability” refers to adults with the set of intellectual, cognitive, and developmental disabilities that has been known as “mild mental retardation.”*

### *Dan’s Case*

*I was working at the prison in January 2003 when a social worker sent “Dan” up to see me on the Medical Unit. Dan was 50 at the time and had been arrested for trespassing in March 2002. He had accepted a plea bargain that could have allowed a June release, but he had no family, case manager, or anyone else to help him with a parole plan and possible early release. So he had been sitting in jail for nine months just waiting to “max” out his sentence. Dr. Nell assessed Dan as having mild mental retardation. She also found him to have schizophrenia. This meant that he was dual disordered and his intellectual disability was compounded by serious mental illness.*

*Dan was a very passive individual who was very eager to please everybody. He readily confessed to anything that he was asked about, and the consequences of admitting guilt totally eluded him. He was completely unable to navigate the courts or correctional systems. He couldn’t read the plea bargain document. He couldn’t understand the basic plea concept or the meaning of charges and sentencing. Part of the process includes the question “Did anyone threaten you to accept this agreement?” Dan always quickly said “Yes!”*

*Dan was identified as a candidate for early release. Nonetheless, it took a full fifty-five days to arrange his departure from prison. Dan also had no place to go. He needed a supportive living setting and these are in short supply. We were able to get him accepted by a community residence that met his needs. There Dan literally blossomed. He fit right in and has been living there happily for almost four years. This is a great outcome, but it should have been accomplished without Dan having to spend a year in prison for a minor offense.*

*Brad Powers  
MCES Community Outreach Services*

MCES has been redirecting individuals with mental illness from the criminal justice system, as appropriate, since its inception. For more than 30 years it has operated a comprehensive criminal justice diversion program. Early on MCES learned that those with psychiatric disorders were not the only disabled persons at risk of imprisonment because of behavior related to their condition.

Persons with intellectual disability are at comparable jeopardy of being caught up in the criminal justice system after a minor misdemeanor, engaging in acts whose criminality may be beyond their comprehension, or just being in the wrong place and taking responsibility for an offense without understanding the consequences. Law enforcement personnel are made aware of these contingencies in MCES’s Crisis Intervention Specialist (CIS) training and advanced “police school” courses.

This issue is based on that training and presentations by Rocio Nell, MD, CPE, our CEO/Medical Director, and Donald Kline, PhD, Community Outreach Director, in our Community Lecture Series.

Our last issue (Mental Illness & Mental Retardation: Understanding Dual Disorders, April 2007, available at [www.mces.org](http://www.mces.org)) looked at the problem of co-occurring developmental disability and mental illness. Earlier issues focused on our programs to divert those with serious mental illness from the criminal justice system. These efforts also serve persons with intellectual disability, who, like Dan, may come into contact with the criminal justice system.

Here we’ll look at how individuals with intellectual disability come to have police contact, what happens if they face arrest, booking, hearings, trial, imprisonment, and re-entry. We’ll also look at how they can be diverted from the criminal justice system. This issue is intended for family members, police, courts, correctional facilities, probation and

parole officers, MH/MR providers, and anyone concerned about the developmentally disabled.

Jail diversion measures for individuals with serious mental illness do not automatically help persons with intellectual disability. Mental illness has different signs and behaviors than intellectual disability and mental health specialists can not always recognize its signs. Many persons with intellectual disability can also be mentally ill.

The most significant point of convergence between those with mental illness and those with intellectual disability is that the vast majority of individuals in both groups never engage in any form of criminal behavior.

Individuals affected by intellectual disability may be increasing with population growth and a worsening of some of the factors causally related to this disability (e.g., poor prenatal care due to lack of health insurance). These individuals are at risk of criminal justice contact because of their disability at some point in their teen and adult years. These individuals, their families, the developmental disabilities service system, and criminal justice agencies must understand this risk and work together to lessen it.

## The Nature of Mental Retardation

Mental retardation is a form of intellectual disability that affects approximately 3 percent of the general population or about three of every 100 individuals. This disability occurs in all racial, ethnic, educational, social and economic groups. It may be caused by any condition which impairs development of the brain before birth, during birth, or in the childhood years.

The American Association on Intellectual and Developmental Disabilities defines mental retardation as “a disability characterized by significant limitations both in intellectual

functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.” The American Psychiatric Association specifies three main criteria for determining mental retardation: (1) below average general intellectual functioning; (2) significant limitations in adaptive functioning in at least two of the following skill areas (communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety); and (3) the onset before age 18.

Individuals with mental retardation are classified according to their IQ and their degree of impairment. Those most at risk of criminal justice involvement are those with “mild mental retardation” (IQ 50 - 69). It is estimated that individuals with mild mental retardation comprise up to 90% of all those with mental retardation.

These individuals think very concretely and can function with some support. They may be quite verbal, but tend to grasp information only when presented in very literal terms. Abstract ideas may not be understood. Long sentences may be only partially taken in because of limited memory and attention. They can have full comprehension of wrongdoing, but have limited judgment and ability to modulate their behavior. They are more likely to be very aware of their disability and to not want it to be noticed. For this reason they may not acknowledge any limitations or try to hide them.

The phrase “mild mental retardation” is a misnomer. It refers to the level of severity, not to the effects of the disability on the individual’s life or his/her ability to avoid situations that may result in criminal justice involvement.

*Individuals with mild mental retardation who have police contact are most often males, ages 20 – 40, who are aware of their disability, and who engage in criminal behavior with others. They are frequently from an economically disadvantaged background and unemployed. Offenses are usually public indecency, stalking, sex-related, drug-related, petty theft, burglary, robbery, and assault.*

*From Developmentally Disabled Offenders Program  
The Arc of New Jersey*

*Tony's Case:*

*In August 2001, police officers in Whitemarsh Township found a man on Germantown Pike who appeared lost and disoriented. He seemed fine and showed no signs of intoxication, but he had no identification and did not know who he was. The officers took him to MCES.*

*At MCES he was not found to have any injuries that could explain his condition. As he was unable to care for himself he was admitted. Efforts were immediately made to identify him. He said that his name might be "Tony" and he recalled some connection to Philadelphia. Missing person lists, police, hospitals, and providers throughout the region were contacted to no avail. No one missed "Tony" and no one was looking for him.*

*Tony had a long stay at MCES because there was no place else for him. If he could not be identified he would become a ward of the state and be institutionalized. MCES staff sent photos and a description of Tony to the media in the tri-state area. Finally a case worker in Philadelphia who had worked with his mother recognized him.*

*Tony was in his 40s and had lived with his mother in the city until their home was condemned and they were taken to shelters after eviction. Tony walked away from the shelter and found his way to Montgomery County. He was not "in the system" and had no Social Security number. Once facts about his background were shared he remembered more about himself.*

*Tony was intellectually disabled. He had left the shelter to look for his mother. Had it not been for the Whitemarsh Township police his journey may have had a sadder ending that could have involved detention. As it was, he still was hospitalized for a lengthy period. Tony's experience shows how easy it is for persons with his disability to get lost in the system even when many people were trying to help him.*

**Identifying the Presence of Intellectual Disability**

Diagnosing intellectual disability involves a process of clinical observation, testing, and assessment. For this discussion it is sufficient to understand that this condition basically entails delays in learning, a slower pace of learning, and difficulty in applying learning that manifest themselves in an individual's behavior.

Following are some general behaviors cited by The Arc of the United States (formerly the Association of Retarded Citizens) and other sources that may help law enforcement, the courts, and the correctional system recognize someone with this disability.

***The individual has noticeable communication problems***

- Communication generally is not appropriate to his/her age.
- Vocabulary may be very limited and a speech deficit may be present.
- There may be difficulty understanding or answering questions.
- There may be a limited ability to read or write.
- There may be difficulty in recalling facts or details of recent events.

***The individual's behavior is not age appropriate***

- The person may be completely unaware of basic behavioral cues.
- There may be difficulty making change, using the telephone, telling time, etc.
- There may be a high degree of impulsiveness and a low frustration tolerance.
- The person may mimic responses or answers given by others .
- There may be inappropriate interactions with peers or the opposite sex.
- The person may be easily influenced by and anxious to please others.

***The individual does not understand the nature of the situation***

- The seriousness of immediate situations may not be grasped.
- The person may smile or seem to be unable to be still (even when asked to do so).
- There may seem to be little thought given to actions and statements.
- The acceptability or legality of actions or behaviors is not considered.
- There may be little recognition of his/her individual rights.

These behaviors are not limited to persons with intellectual disability, but when they are encountered consideration should be given to the likelihood that the individual may be disabled.

*“...Mental retardation is virtually impossible for an adult to fake: when evaluating whether an adult is mentally retarded, testers look not only at I.Q. test results, but also at school reports, childhood test records, and other evidence that would show whether his or her intellectual and adaptive problems developed during childhood.”*

*Human Rights Watch*

## Some Basic Screening Questions

These questions from The Arc of New Jersey may determine the presence of intellectual disability:

- Can the person explain her/his actions in her/his own words?
- Does the person appear to understand the questions?
- Does the individual answer without a noticeable delay?
- Can the individual read or write beyond signing his/her own name?
- Can the individual readily tell what time it is?
- Can the individual give clear directions to some common location or landmark?
- Does the individual have a special education background?
- Does the individual have a steady job?
- Is the individual receiving financial assistance?

These questions may sometimes point to a disability other than mental retardation (or perhaps no disability at all). The Arc advises when in doubt assume that intellectual disability is present.

## Behaviors of Persons with Intellectual Disability in Criminal Justice Settings

In addition to the disadvantages inherent to their disability, those with mental retardation may not have been taught to make their own decisions or familiarized with what constitutes criminal behavior.

Persons with intellectual disability should be diverted from the criminal justice system, when appropriate, at the earliest point of contact. In cases where imprisonment is indicated they should be diverted to arrangements that best serve their interests and those of the community. This means providing habilitation to minimize further offenses.

Persons with an intellectual disability may be found at arrest and arraignment, at court, or in detention or incarceration. Here are outcomes likely to characterize these individuals in each of these settings:

### *Persons with intellectual disability in contact with police:*

- More likely to be overly willing to confess and to confess quickly.
- More likely to have difficulty recalling facts or details of the offense.
- More likely to be overwhelmed by police authority.
- More likely to act suspiciously or furtively when confronted.
- Unable to understand Miranda Rights<sup>1</sup>.
- Unable to understand what it means to waive these rights.
- Less likely to have things explained to them in terms that they can understand.
- Less likely to fully comprehend the nature of proceedings against them.

It is often noted that offenders with intellectual disability are usually the last to leave the scene and the first to get caught. Individuals with mild mental retardation can form intent and are capable of some premeditation. However, their disability may affect the planning and execution of their acts.

Police contacts are problematic for these individuals because they may say what they think the officer wants to hear, and try to mask their disability. They may convince an officer who suspects the presence of disability that it is not present and convey a greater level of understanding than he/she may actually have.

Stephen Greenspan, of the University of Connecticut and the Academy on Mental Retardation notes that these individuals are often “naïve offenders.”<sup>2</sup> They may technically violate a statute (e.g., urinating in public) but they have no criminal intent (e.g., deliberate indecent exposure).

<sup>1</sup> A cognitive ability equivalent to a seventh-grade level is necessary to understand the Miranda statement. Most individuals with mild mental retardation are generally below the sixth-grade level.

<sup>2</sup> Quoted in J. Keedle, “When the Mentally Retarded Commit Crimes, Is Prison Where They Should do Their Time” *The Hartford Advocate* (1997) [www.old.hartfordadvocate.com/mentally-retarded-jail](http://www.old.hartfordadvocate.com/mentally-retarded-jail)

### **“Tips for Police Relating to Individuals Who Have Mental Retardation”**

- Allow adequate time for your interview and take a break every 15 minutes.
- Listen to how individuals talk, and match to their vocabulary, tempo, and sentence structure.
- Separate complex information into smaller parts and use gestures and other visual props to get your meaning across. Do not overload individuals with too much information.
- Give references: “What color was the man’s hair?” rather than “What did the man look like?”
- Wait patiently at least 30 seconds for individuals to respond to an instruction or question. If individuals do not respond or reply inappropriately, calmly repeat yourself, using different words.
- Repeat the last phrase of individuals’ responses in question form to help them stay focused during your interview. For example, ask “You fell down?”, and “You tried to run?”
- Avoid questions like: “Do you have any idea what was going on?”, or “What made you do that?”

*Office of Justice Programs, US Department of Justice*

#### ***Persons with intellectual disability at hearings and in court***

- More likely to have their disability overlooked by all parties including their defense attorney.
- More likely to have a false sense of comprehension of the process and their options.
- More likely to have their credibility and reliability undermined by prosecutors.
- More likely to be impacted by mandatory sentencing (e.g., “three strikes” policy).
- More likely to be convicted of the initial offense leading to their arrest (than a lesser charge).
- Less likely to be determined to be mentally incompetent to stand trial<sup>3</sup>.
- Less likely to have their waiver of Miranda Rights challenged.
- Less likely to benefit from plea bargaining.
- Less likely to have charges mitigated or sentences reduced.
- Less likely to receive probation.
- Less likely to effectively participate in their defense.

#### ***Persons with intellectual disability in correctional settings and probation/parole***

Studies indicate that inmates with intellectual disability make up 4% - 10% of the prison population in the US. Two percent to five percent of those in the Pennsylvania state prison system have IQs below 70. No information is available on persons with intellectual disability who are held in municipal jails or detention facilities. As long ago as 1991, The President’s Committee on Mental Retardation noted that the number of inmates with mental retardation in federal and state prisons was increasing.

Here is what these individuals face as they proceed through the criminal justice system:

- More likely to be victimized and exploited by other inmates.
- More likely to physically respond to physical threats.
- More likely to be charged with disciplinary infractions.
- More likely to be assigned to higher security units and segregation.
- More likely to serve all or most of their sentences.
- More likely to have difficulty complying with terms of parole.
- More likely to enter a revolving cycle of prison-parole-prison.
- Less likely to receive any rehabilitative services.
- Less likely to be readied for their eventual release.
- Less likely to earn credits that may reduce their time served.
- Less likely to have a prison record that will favorably impress a parole board.
- Less likely to have their disability considered in their parole or probation plans.
- Less likely to receive any help with re-entry or transitioning to community living.
- Less likely to be placed in special probation caseloads or programs.

Many terms and phrases commonly used in referring to disabled persons are hurtful and stigmatizing. Don’t describe someone as “retarded” or call him a “retard” or an “MR.” Use terms such as “disabled” or “person with disability.” The phrase “person with mental retardation” is generally acceptable.

<sup>3</sup> Those with intellectual disability may have their competence evaluated but they are less likely to request pre-trial psychological testing or to be able to advocate for

### More Suggestions for Dealing with a Suspect with Intellectual Disability

- Use simple language; speak slowly and clearly.
- Use concrete terms and ideas.
- Avoid questions that imply the expected answer.
- Phrase questions to avoid “yes” or “no” answers.
- When giving Miranda warnings, ask the person to explain their understanding rather than just giving “yes” or “no” answers.
- Repeat questions from a slightly different perspective.
- Ask for concrete descriptions, colors, clothing, etc.
- Proceed slowly and give praise and encouragement.
- Avoid frustrating questions about time, complex sentences, or reasons for behavior.

*New York State Office of Mental Retardation and Developmental Disabilities  
Bureau of Forensic Services*

## Imprisonment and Intellectual Disability: A Poor Fit

The adjective “special” is associated with persons with intellectual disability in the criminal justice system as in the general community. They are a “special population” and one of several groups comprising “special offenders.” The latter designation applies to “those... whose circumstances, conditions, or behaviors require management or treatment outside the normal approach to supervision.”<sup>4</sup>

If their “special needs” are recognized and if there are special resources available then inmates with disability may be able to cope with prison. When their needs go unnoted or cannot be addressed then their prison experience will be anything but special.

In prison intellectual disability exposes the individual to a wide range of vulnerabilities that may combine to make the stay more stressful, more painful, more shameful, more debilitating, and longer than that experienced by other inmates.

An individual sensitive to his disability may try to avoid participating in educational or vocational activities lest his handicap become evident. At the same time the desire to be accepted may lead to even more tragic consequences. At the very least inmates with intellectual disability are likely to deteriorate once incarcerated.

As with individuals with serious mental illness, the correctional system, in general, is ill-suited to deal with persons with intellectual disability. This is because it is intended to maintain, manage, and, to the extent possible, rehabilitate,

individuals at, near, or above an average level of functioning.

“Punishment should fit the crime” may be entirely lost on individuals whose disability limits their capacity to relate some past personal actions to their sentence. Even when the individual was responsible for the offense as charged, he/she may not be able to connect it causally to his incarceration. Limited memory may restrict the level of recollection required to make this link.

Those with intellectual disability are not only less likely to be rehabilitated by the experience but more likely to be more habituated to negative behaviors than inmates not so disabled. One legal advocate put it this way: “...Since intellectually-limited people generally learn in a concrete fashion, there is a real argument that if they are in prison where people are exposed to violence and assault regularly, they are likely to repeat this behavior upon release.”<sup>5</sup>

Prison offers rehabilitation; persons with intellectual disability need habilitation. Habilitation assists individuals to gain, maintain, and improve skills in the areas of self-care, daily living activities, social skills, and to enable the person’s involvement in community activities.

Lastly there is the economic dimension. Disabled individuals require a disproportionate amount of staff time and drive increased costs. They are also a liability and risk management concern.

<sup>4</sup> R. Seiter (2004) *Corrections: An Introduction* Saddle River, NJ: Pearson Prentice-Hall, p. 270.

<sup>5</sup> J. Dagher-Margosian (2006) *Disability Project*

## A Diversion Strategy for Persons with Intellectual Disability

MCES and most other diversion programs fit wholly or partly under what is known as the “Sequential Intercept Model.”<sup>6</sup> This model identifies several “intercepts” or points of contact for diverting individuals from the criminal justice system who could be more appropriately served elsewhere. The “intercepts are:

1. **Police Contact (Pre-booking)** – The identification of at-risk individuals by law enforcement personnel trained to recognize the signs of intellectual disability.
2. **Initial Detention/Hearing (Pre-booking)** – recognition of at-risk individuals by community liaisons who act as boundary spanners between the MH/MR and criminal justice systems.
3. **Pre-trial/Trial (Post-booking)** – Finding potentially at-risk people as they are being brought to trial or being tried.
4. **Incarceration in Jail/Prison (Post-booking)** – Recognition of a possible disability by correctional officers.
5. **Re-entry from Prison** – Helping at-risk inmates to minimize exposure to situations that may lead to future police contact.
6. **Community Supports** – Working with the individual to prevent re-involvement with the criminal justice system.

“Pre-booking diversion” refers to efforts before charges are brought. It requires a strong working relationship between police and community services. Effective pre-booking programs are characterized by police training and a 24-hour crisis drop-off center that is available to receive persons brought in by the police. These are features of the MCES approach.

“Post-booking diversion” involves efforts to identify and divert at-risk individuals after they have been booked and are either awaiting trial or in jail. Diversion staff work with prosecutors, public defenders, attorneys, community providers, and the courts to work out an alternative disposition to incarceration using appropriate community-based services.

Persons with intellectual disability are best served by “pre-contact diversion.” This would help those at risk from engaging in behaviors that may bring them to the attention

of the criminal justice system and provide them with basic information and skills for coping with this eventuality should it occur.

## Putting the Intercept Model to Work for Persons with Intellectual Disability

This section describes how each intercept can divert disabled persons from the criminal justice system and gives examples of intercepts in use locally and elsewhere.

### *Police Contact Intercept:*

MCES’s Crisis Intervention Specialist (CIS) training is a good example. It prepares police officers and other criminal justice personnel to deal safely and effectively with individuals with serious mental illness, intellectual disability, or behavioral health emergencies.

If police officers do not understand intellectual disability or recognize its possible presence, individuals can be needlessly detained, questioned, or arrested. With training, officers can be given a basic grounding in its nature, the behaviors suggesting that it may be present, and techniques for communicating with the individual.

CIS trained personnel are able to:

- Provide crisis intervention and stabilization.
- Interview and assess individuals in crisis.
- Resolve conflicts and de-escalate violent situations without force.
- Use crisis services to divert at-risk individuals from the criminal justice system.
- Make referrals to applicable community-based services.

MCES offers CIS training in a number of formats to accommodate trainee needs. It is most commonly provided through a 3-day “Police School” offered throughout the year at MCES or at the Montgomery County Police Academy and elsewhere. It is available to all law enforcement entities in Montgomery County at no cost thanks to the County Office of Mental Health and other sources<sup>7</sup>.

<sup>6</sup> See for example M. Munetz and P. Griffin (2006) “Use of the Sequential Intercept Model to the Decriminalization of People with Serious Mental Illness” *Psychiatric Services* 57:544-549. We have modified the usual five-step version of the model to break out the trial phase of the process.

<sup>7</sup> These have included the Pew Charitable Trusts, the Patricia Kind Foundation, the van Ameringen Foundation, and the American Psychiatric Foundation.

Trained police officers are the front end of this intercept. The back end is giving police somewhere to turn for help after they have a person with disability in custody. Without this element the choices are detention or release. The first puts the individuals on the criminal justice treadmill; the second leaves him/her exposed to further police contact.

MCES supports the police it trains by being there 24/7 to serve as a secure facility where an individual whose behavior may be related to mental illness or intellectual disability can be taken for evaluation. This enables both the police and MCES staff to learn more about the individual's needs and background while he/she is in a supportive setting.

In some cases, when appropriate, the individual may be released to his/her family or residential provider. In other cases, where immediate release is not possible, the assessment completed at MCES may be instrumental in accomplishing diversion from the criminal justice system at the next intercept.

In communities without a crisis center like MCES it will be necessary to create some arrangement to give police clinical backup for screening and assessment of individuals whose police contact may be disorder or disability-related. This must be accessible around-the-clock and on holidays and weekends. Without this gatekeeper capacity the police intercept will lose much of its effectiveness.

#### ***Initial Detention/Hearing Intercept:***

Police contact is the preferable point for initiating diversion. However, there may be many factors interfering with recognition of a potentially disabled person during the initial encounter. It may not be until the individual is in custody that some attention can be given to the possibility that the alleged offender may be an individual with mental retardation.

Typically the presence of a disability may emerge during transport, at the hearing with a magistrate or district justice, or during detention. It is critical that disability not be overlooked here because the individual is now formally crossing the threshold to the criminal justice system and the occasions for easy diversion lessen as he/she proceeds.

Police officers alert to the signs of intellectual disability remain key to this intercept. They have greater opportunity to observe and interact with the individual through questioning and other activities. It is also necessary that those supervising the individual during any detention, district justice personnel, and public defenders and other attorneys be able to identify the presence of intellectual disability.

If intellectual disability is suspected and the charges are not too serious it may be possible to have them held in abeyance pending a community service disposition for the individual or they may be dismissed entirely. These are outcomes that MCES staff works for when they attend hearings before district justices involving persons with intellectual disability.

In West Chester County, NY, the Alternative to Sentencing Program offers case management to offenders with a disability and to those whose behavior places them at risk of entering the criminal justice system. Referrals come from the court, attorneys, probation, parents, or the school system, for individuals who are age 16 or older. A service coordinator assists with accessing vocational, educational, drug and alcohol treatment, advocacy, medical, and housing services.

#### ***Pre-Trial/Trial Intercept:***

Many communities have focused on the court system as a contact point for diversion. The mental health court concept used in many states, and in Allegheny County in Pennsylvania, is the principal approach at this intercept level. The Kings County Mental Health Court in Seattle, WA, is the prototype for similar courts elsewhere. It accepts cases involving intellectually disabled defendants. However, not all such special courts serve persons with intellectual disability.

Court system intercepts may take other forms. One way is to add support and advocacy resources for persons with intellectual disability to the court system. The Temple University Institute for Disability's "Equal Justice for People with Developmental Disabilities Project" is developing a replicable local advocacy model for use at the municipal court level. It will provide a local court advocate within the court system to ensure the rights of individuals with intellectual disability.

The project will also build local capacity by providing criminal justice mentoring to self-advocates and family members, and training and technical assistance to local criminal justice professionals. Trained family members and self-advocates will provide training and support to other self-advocates and family members so that they have an increased capacity to support themselves and others when they come in contact with the criminal justice system.

In Buffalo, NY, Community Services for the Developmentally Disabled partners with the Erie County Probation Department to run the Developmentally Disabled Offender



Program. The program's aim is to provide alternatives to incarceration. Programs are also available for those ages 12-25 who are at high risk of becoming involved with the criminal justice system.

Greater involvement by developmental disability providers and advocates on behalf of persons with intellectual disability at this intercept would be extremely helpful. Brad Powers, MCEs specialist, advises that Sharon Potter of the "Safer Options" Project funded by the Office of Developmental Programs of the PA Department of Public Welfare "is the only forensic advocate I've ever met who will come to court with me to try to resolve these cases."

In its "Criminal Justice Policy Statement" (2002) the Arc states "When our constituents come into contact with the criminal justice system, they must: have the right to an advocate, in addition to their lawyer, who has expertise in their disability."

Another constraint at this intercept is the very limited availability of alternatives to incarceration for persons with intellectual disability who are considered to be high-risk offenders and not candidates for release from charges or probation. The Court will generally only consider an intensive residential option to imprisonment that offers a fairly high level of security to ensure community safety. The City of Philadelphia's Mental Retardation Services reports that this puts a "heavy burden on the mental retardation system" and that even when such placements can be made the cost is approximately \$250,000 per person per year.<sup>8</sup>

More options exist for lower risk offenders with intellectual disability. These may include outpatient programs or supervised arrangements involving family or other community residences. More needs to be done to expand the availability of these resources.

Some persons with intellectual disability have problematic sexual behavior that may lead to being charged with sex offenses. These individuals present serious challenges for diversion from incarceration. Court-ordered treatment can be beneficial but few therapists work with intellectually disabled sex offenders. The previously mentioned state-funded Safer Options Project is working to fill this gap in service across the state by training therapists who work with non-disabled sex offenders to broaden their practices to include intellectually disabled offenders.

<sup>8</sup> *Annual Plan for Supports and Services for People with Mental Retardation, 2005-2006.*

*Project CHANCE (Case management/Habilitation/Advocacy/Networking/Coordinating Council/Education and training) was a program run by the Association of Retarded Citizens and funded by the Texas Council on Offenders with Mental Impairment...to reduce recidivism rates through intensive case management. The project, which operated for 7 years, helped developmentally disabled offenders understand their legal rights and responsibilities, make informed decisions, set goals, and identify the resources necessary to achieve those goals. The program boasted an 11 percent recidivism rate for participants, compared with nearly 60 percent for comparable groups. Services for incarcerated mentally retarded offenders cost between \$30,000 and \$45,000 per person annually, versus \$9,000 for Project CHANCE case management. Even if special services for developmentally disabled inmates were not included, Project CHANCE case management costs \$32 per day per inmate, compared with \$56 per day for county jail incarceration.*

*From Kerry M. Healey (1999)  
Case Management in the Criminal Justice System  
Washington, DC. US Department of Justice,  
Office of Justice Programs, National Institute of Justice*

### ***Incarceration Intercept:***

Diversion in correctional settings has two components. The first is to identify and facilitate the release of persons with intellectual disability who may have been inappropriately imprisoned or who have basically satisfied conditions for parole. The second is to intervene to protect and habilitate individuals appropriately serving sentences and ready them for life after prison.

The State of Texas Department of Criminal Justice established a "Mentally Retarded Offender Program" (MROP) in 2000 to mitigate the adverse effects of imprisonment and promote positive community re-entry and reintegration for male and female inmates with intellectual disability. Services range from assessment to transitional/discharge planning.

Inmates are housed in two separate special units that provide sheltered living and working conditions that are oriented to their needs and abilities and afford protection from other prisoners. Those in the program live in the least restrictive settings suitable to their needs. Services include medical and psychiatric care, special education, occupational therapy, and vocational and pre-release classes. An Individualized Habilitation Plan (IHP) is a key part of the program.

The Pennsylvania Department of Corrections (DOC) operates “special needs units” for inmates unable to function in a prison’s general population. DOC also has the Forensic Community Re-Entry and Rehabilitation Program that serves persons with intellectual disability. DOC staff refers inmates with intellectual disability to the program approximately 12 months prior to their release for needs assessment. A community placement specialist locates community-based services (housing, mental health, substance abuse, childcare, employment training) in the inmate’s home jurisdiction.

Generally county prison level intercepts for diverting persons with intellectual disability are uncommon. Consequently a “revolving door” for offenders with mental retardation is often found in these facilities. Training of correctional officers, counselors, and clinical staff to screen for mental retardation at various points from intake to release is essential to break this cycle.

### ***Re-entry Intercept:***

County prisons may need help in readying an intellectually disabled person for the community. MCES’s Forensic Transition Program is a community-based pre-release/post-release diversion intercept to facilitate community re-entry/reintegration and reduce the prospects for subsequent criminal justice involvement on the part of probationers/parolees with intellectual disability or serious mental illness.

A case manager interviews at-risk inmates and determines how their needs can best be met both while in custody and as they transition into the community. Working with county prison staff the case manager develops a re-entry plan for the individual. Arranging suitable housing is the foundation of the plan. Without approved housing, as was noted in Dan’s case, release may be delayed for many months. The search for housing may be made more difficult when programs with openings also have policies barring residence to those with criminal histories.

Assisting the individual to apply for financial assistance and medical assistance are other tasks of the Forensic Transition Case Manager. Where family supports are present the case manager attempts to mobilize them as part of the re-entry plan. Community supports are sought from agencies and programs serving persons with intellectual disability. Working with the county probation and parole departments brings the authority and resources of the office that will be responsible for overseeing the individual’s post-prison life into the plan.

### ***Probation and Parole***

*Probation is a criminal sentence that is an alternative to incarceration. A person placed on probation has a prison sentence that is suspended as long as the person complies with the conditions of probation. The length and terms of probation are set at sentencing. Upon completion of probation the individual is free of court supervision.*

*Parole is a way of terminating incarceration. Sentences may have a minimum period of imprisonment. Once this is completed, the parole board decides if the offender is eligible to complete the sentence on parole. A paroled offender must meet conditions similar to those for probation for a given period of time. Upon completion the original sentence is fulfilled.*

*Violating the terms of release can cause probation and parole to be revoked. A probationer may be faced with imprisonment. A parolee may return to prison to serve the remainder of the sentence. Qualifying for probation or parole and meeting the conditions may present problems for persons with intellectual disability.*

### *Community Support Intercept:*

Individuals who have been fairly adjudicated, sentenced, and incarcerated remain prime candidates for diversion from ongoing criminal justice system involvement. Responsibility for aftercare intercepts chiefly falls upon the county probation and parole office, which may enlist the help of local providers when working with persons with intellectual disability.

In Montgomery County a strong partnership exists between MCEs and the Montgomery County Adult Probation and Parole Department's Mental Health Unit. This special unit was formed to meet the special needs of offenders with serious mental illness and is staffed by personnel with specific mental health training. Supervision of offenders with intellectual disability is the responsibility of this unit. MCEs staff provide case management and in-home support and linkages to necessary community services.

A similar approach was taken in Lancaster County in the 1980s. The Office of Special Offenders Services is a special program of the Lancaster County Adult Probation & Parole Service. Like Montgomery County it utilizes a dual-system model combining criminal justice and mental health/mental retardation system elements. Each client is assigned a specially trained adult probation officer and an MH/MR case manager who work as a team.

Philadelphia County has a number of special offender services. PersonLink, an affiliate of the Philadelphia Health Management Corporation, provides supports coordination to persons with intellectual disability involved with the criminal justice system. Catch Inc. works with the Philadelphia Department of Adult Probation and Parole to provide intensive case management, counseling, training and advocacy coordination to persons with intellectual disability who have come in contact with the criminal justice system.

## Closing Comments: Optimizing Adaptive Behavior

*People with disabilities, family members, providers, and others who work in human services need training to help them understand the criminal justice system. They must be trained about how the criminal justice system operates and about their rights and responsibilities. Young people involved in the juvenile justice system and their families and school officials need to understand the juvenile justice system, and their rights and responsibilities.*

*Pennsylvania Developmental Disabilities Council  
Criminal Justice Position Paper (June 2005)*

Adaptive behavior among persons with intellectual disability can be improved substantially. The American Association on Intellectual and Developmental Disabilities promotes the concept of "supports" to optimize the individual functioning in regard to development, education, interests, and personal well-being. Behavioral activity supports such as learning and making appropriate decisions, maintaining socially appropriate behavior in public, and controlling anger and aggression are most associated with avoiding criminal justice system involvement.

These supports may be provided to persons with intellectual disability on an intermittent or limited basis. Intermittent support is given on an "as needed" basis such as when an individual is recognized to be in situations or manifesting behaviors that have the potential for leading to criminal justice system contact. Limited support is given over a longer period of time such as during the transition from living at home with parents or in supportive housing to residing independently in the community or moving from an educational to work setting.

The service system for the developmentally disabled must increase the availability of criminal justice-related education for people with mental retardation and their families and care providers. Persons with intellectual disability must have access to education that enhances their ability to protect themselves from criminal victimization and avoid possible criminal activities. If they do become involved with the criminal justice system, they, their families, and providers need to better understand how the system functions.

Providers, advocates, and family members seeking to learn more about the workings of the criminal justice system in Montgomery County are referred to the August 2002 issue of the *MCEs Quest*. For a copy please visit [www.mces.org](http://www.mces.org) or call 610-279-6100.

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***Some Suggested Readings:***

Davis, L. (2005) "People with Intellectual Disabilities in the Criminal Justice System: Victims and Suspects" *The Arc of the United States*, Silver Springs, MD.

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